IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLIATION NO.299/06

Shri.Dholya Shankar Huseini Gaikwad .... Applicant

V/s.

The State of Maharashtra .... Respondent

Shri.Subhash Jha i/b Law Global for the applicant.
Shri.M.M. Deshmukh APP for the State.

CORAM : V.M. KANADE, J.

DATED : 27/04/06

P.C.:-

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This is the third application for a bail filed by the applicant. The applicant is in jail since last 22 months. The applicant was convicted by the Sessions Court for the offences punishable U/s.307, 452 r/w 34 of IPC and sentenced to suffer R.I. for 8 years. It is alleged that the applicant went to the house of complainant alongwith other accused and assaulted him since he had filed a complaint against the present

applicant and others alleging that they were carrying on illegal activities of selling of brown sugar in the vicinity of their house. Looking at the seriousness of the offence and evidence which was on record, initially application for bail was rejected by this court on two different occasions. However, during this period the appeal could not be heard and the appeal is still pending.

3. The applicant has already undergone fifty per cent of sentence. The appeal is not likely to be heard in the immediate near future. Under this circumstances the applicant is entitled to be released on bail.

4. The Supreme Court in the case of **Kiran Kumar Vs. State of M.P. reported in (2001) 9 SCC 211**. Para 3 of the said judgment reads as under:-

> "3. This Court has held in Bhagwan Rama Shinde Gosai Vs. State of Gujarat[(1999) 4 SCC 421 : 1999 SCC (Cri) 553] that when a person is convicted and sentenced to short-term imprisonment the normal rule is that when his

> appeal is pending the sentenced should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentenced is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes infructuous so far as the appellant is concerned. It does not man that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties."

5. In view of these observations of the Supreme Court, in my view, this is a fit case for grant of bail. The applicant be released on bail in the sum of Rs.5,000/- with one or two sureties in the like amount. The applicant shall report to Ambernath Police Station, once in a month.

6. The applicant shall not tamper with the evidence or threaten the witnesses. If any complaint is received

by the Investigating Officer, the Public Prosecutor is at liberty to file an application for cancellation of bail.

7. The Trial Court shall not be influenced by any observations made by this Court while deciding the application and they shall not be construed as an expression of opinion on merits of the case and it shall decide the case on its own merit and in accordance with law.

8. The application is accordingly disposed of.

V.M. KANADE J.